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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/548,308
Filing Date: April 12, 2000
Appellant(s): WASILKO, JEFF

Kevin L. Pontius
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 16, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1, 2, 4, 7-9, 14, 15, 17, 19 and 20 stand or fall together.

The rejection of claims 3 and 16 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5951636	Zerber	09-1999
5278984	Batchelor	01-1994
5765033	Miloslavsky	06-1998
5956521	Wang	09-1999
5987504	Toga	11-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,951,636 issued to Zerber in view of USPN 5,278,984 issued to Batchelor.

Regarding claims 1 and 14, Zerber teaches a method of moderating traffic load on network servers in a network where electronic mail is retained from at least one mail server, the method comprising:

permitting a mail request for a mail client to pass through a proxy server to the mail server (Abstract; figure 3 no. 52; figure 4A no. 100-104; figure 4B no. 144; figure 4C no. 164, 166, 174-178).

Zerber fails to teach delaying subsequent mail requests for the mail client at the proxy server until a predetermined condition has been satisfied.

Batchelor teaches queuing and delaying mail requests at a server until a predetermined condition has been satisfied (Abstract; col. 1, lines 27-28; lines 56-66; col. 2, lines 4-6; 58-61). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teaching of Zerber with the teaching of Batchelor by delaying mail request until a predetermined condition has been satisfied in order to prioritize messages so that the sequence of execution and access to resource can be determined, therefore providing optimum performance to the system (col. 1, lines 27-33).

Regarding claims 2 and 15, Zerber fails to teach the method of claim 1, wherein the predetermined condition is a predetermined period of time. Batchelor teaches the predetermined condition being a predetermined period of time (title; col. 1, lines 26-28; col. 2, lines 45-49). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to employ a predetermine period of time in order to delay mail request in order to order to prioritize

messages so that the sequence of execution and access to resource can be determined, therefore providing optimum performance to the system (col. 1, lines 27-33).

Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,951,636 issued to Zerber in view of USPN 5,987,504 issued to Toga.

Regarding claims 3 and 16, Zerber fails to teach the method of claim 2 wherein the predetermined period of time is dynamically determined based on the amount of traffic load on the network. Toga teaches retrieving data at a future time when network traffic is lower (Abstract; col. 2, line 61- col. 3, line 10). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to enable the predetermined period of time based on a the amount of traffic load because it would be more economical to send mail the client when usage is lower and bandwidth is higher (col. 3, lines 15-23).

Claims 4 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,951,636 issued to Zerber in view of USPN 5,278,984 issued to Batchelor in further view of USPN 5,765,033 issued to Miloslavsky.

Regarding claims 4 and 17, Zerber and Batchelor fail to teach the method of claim 2, wherein the predetermined period of time is dynamically determined based on past behavior of the mail client. Miloslavsky teaches storing a history of activities in electronic routing system (Abstract; col. 2, lines 23-26). At the time the invention was made, it would have been obvious

to one of ordinary skill in the art to determine the predetermined period of time based on past behavior of the mail client in order to facilitate that the proxy server in making a decision on sending a mail request to the client (col. 2, lines 26-27).

Claim 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,951,636 issued to Zerber in view of USPN 5,278,984 issued to Batchelor in further view of USPN 5,956,521 issued to Wang.

Regarding claims 7 and 19, Zerber fails to teach the method of claim 1, wherein the predetermined condition is a combination of a predetermined time period and receipt of a notification from the mail server that mail has been received for the mail client at the mail server. Batchelor teaches the predetermined condition being a combination of a predetermined time period (title; col. 1, lines 26-28; col. 2, lines 45-49).

Zerber and Batchelor fail to teach the predetermined condition being a receipt of a notification from the mail server for the mail client at the mail server. Wang teaches a server receiving a mail message and notifies the message to a mail client (Abstract; col. 2, lines 32-43). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teaching of Batchelor and Wang into the teaching of Zerber by having the mail server notify the mail client of its receipt of mail in order let the user know that there is mail waiting for him or her so that will allow him/her to check the mail.

Claims 8, 9, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zerber in view of Batchelor in view of Wang in further view of Miloslavsky.

Regarding claims 8 and 20, Zerber, Batchelor, and Wang fail to teach the method of claim 7, wherein the predetermined period of time is dynamically determined based on the amount of traffic load on the network. Miloslavsky teaches storing a history of activities in electronic routing system (Abstract; col. 2, lines 23-26). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to determine the predetermined period of time based on past behavior of the mail client in order to facilitate that the proxy server in making a decision on sending a mail request to the client (col. 2, lines 26-27).

Regarding claim 9, Zerber, Batchelor, and Wang fail to teach the method of claim 7, wherein the predetermined period of time is dynamically determined based on past behavior of the mail client. Miloslavsky teaches storing a history of activities in electronic routing system (Abstract; col. 2, lines 23-26). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to determine the predetermined period of time based on past behavior of the mail client in order to facilitate that the proxy server in making a decision on sending a mail request to the client (col. 2, lines 26-27).

(11) Response to Argument

Appellant's arguments have been fully considered but they are not persuasive.

Appellant argued that Zerber failed to teach or suggest the use of a proxy server to selectively pass or delay email requests. The Patent Office submitted that this limitation was taught in the abstract, as well as figure 3, reference number 52 of the Zerber reference. Although Zerber did not expressly teach the use of "proxy server," one of ordinary skill in the art would have recognized that the "local HTTP server" is equivalent to the "proxy server" as specified in Applicant's specification because they performed the same function in substantially the same way to reach substantially the same result.

Appellant then argued that the "local http server" cannot be interpreted as a distinct server since it is simply a functionality of a JAVA applet running on the user's own machine. However, nowhere in Applicant's claimed invention discloses the "proxy server" as being a distinct server that is separated from the user's own machine. Applicant's claimed invention merely discloses "permitting a mail request for a mail client to pass through the proxy server to the mail server." Zerber discloses permitting a mail request to pass through the local http server to the mail server as specified in figure 3 as well as figure 4A no. 100-104; figure 4B no. 144; figure 4C no. 164, 166, 174-178. Therefore, Zerber's "local http server" is equivalent to Applicant's "proxy server."

Appellant's claimed invention discloses "delaying subsequent mail requests for the mail client at the proxy server until a predetermined condition has been satisfied." Appellant argues that the queuing system disclosed by Batcheldor does not suggest the claimed invention because it does not provide the proxy server. As argued above, Zerber does disclose a proxy server. Combined with Zerber's proxy server, Batcheldor teaches techniques such as queuing or time delayed delivery of message requests in a server, that delays mail requests until a predetermined

condition (such as priority level of the request (col. 2, lines 4-6), or whether the number of requests for an open window exceeds the economic quantity for the window (col. 2, lines 15-23)) has been satisfied. It is well known in computing art that when a mail request is placed in a queue, each subsequent request is being delayed. Therefore, the combination of Zerber and Batcheldor does teach the claimed invention.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

ANB

ANB
September 13, 2004

Conferees

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